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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,461	10/09/2003	Christopher S. Hannaford	55101/113/104	9199

5909 7590 01/18/2005

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EXAMINER	
DEL SOLE, JOSEPH S	

ART UNIT	PAPER NUMBER
1722	

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/682,461	HANNAFORD, CHRISTOPHER S	
	Examiner	Art Unit	
	Joseph S. Del Sole	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 January 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-3 and 9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 and 6-8 of copending Application No. 10/639,536. Although the conflicting claims are not identical, they are not patentably distinct from each other because although claim 1 of 10/639,536 does not claim an extruder, depending on the material pumped the outlet of the pump will form the material into a particular configuration and because roll feeders for delivering dough are notoriously well known in the art as being a structure of side-by-side counter-rotatable rollers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-5 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbons (4,405,399) in view of Anderson (4,494,920).

Gibbons teaches an extruder assembly (Fig 1) for material[1] having a progressing cavity pump means (Fig 1, #47) having an inlet and an outlet, the outlet being adapted to form the material into a desired configuration; the inlet of the pump has screw feeder means (Fig 1); the progressing cavity pump means has screw feeder means (Fig 1); the pump means outlet has extruder means (Fig 1), the extruder means including means for incorporating minor constituents into the material (Fig 1, #51); the minor constituent incorporating means has static mixer means (Fig 1, #51 and col 4, lines 11-20); and the screw feeder (Fig 1, #15) means interconnects the hopper (Fig 1, #11, note that the

hopper has a discharge the discharge delivers material under pressure to the pump means inlet) and the progressing cavity pump (Fig 1, #47).

Gibbons fails to teach roll feeder means (in a hopper) having first and second side-by side, counter-rotating rollers.

Anderson teaches a hopper having counter-rotating rollers (Fig 1, #12 and #12') in a hopper for the purpose of discharging material under pressure (col 4, lines 57-60) and in precise volumetric quantities (col 4, lines 17-18).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Gibbons with counter-rotating rollers in the hopper as taught by Anderson because it provides greater control of the process by delivering material under constant pressure and in precise volumetric quantities thereby increasing the apparatus's efficiency.

[1] The Examiner notes that the claim limitation "dough-like" does not further limit the apparatus because claiming a material shaped does not structurally define an apparatus.

6. Claims 6, 7 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbons (4,405,399) and Anderson (4,494,920) in view of Hill (4,182,601).

Gibbons and Anderson teach the apparatus as discussed above.

Gibbons fails to teach the extruder having means for separating the material[1] into at least two separate streams, the minor constituent incorporating means having means for independently and selectively incorporating minor constituents into separate

streams; and the extruder means being co-extrusion means, at least the first and second streams begin co-extruded via the co-extrusion means.

Hill teaches an extruder means (Fig 1, #11a and #11b) for separating material into two separate streams and the extruder means being co-extrusion means (Fig 1, #15) for the purpose of co-extruding two streams that began as identical and are then coextruded as two streams of different color (col 2, line 66 - col 3, line 55).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Gibbons with the extruder means of Hill because it enables two streams of similar material to be co-extruded in two different colors or with two different types of speckles (the speck incorporating/ static mixing means taught by Gibbons can be used with the streams 11a and 11b of Hill), thereby producing a varied product.

[1] The Examiner notes that the claim limitation "dough-like" does not further limit the apparatus because claiming a material shaped does not structurally define an apparatus.

7. Claims 1-4 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Douglas et al (6,013,222) in view of Anderson (4,494,920).

Douglas et al teach an extruder assembly (Fig 1) for material[1] having a progressing cavity pump means (Fig 1, #4) having an inlet and an outlet, the outlet being adapted to form the material into a desired configuration; the inlet of the pump has screw feeder means (Fig 1, #14); the progressing cavity pump means has screw feeder means (Fig 1, #4 and #14); the pump means outlet has extruder means (Fig 1, #

2 and #5 and #1), the extruder means including means for incorporating minor constituents into the material (Fig 1, #2 and col 4, lines 38-43); and the screw feeder (Fig 1, #14) means interconnects the hopper (Fig 1, #13, note that the hopper has a discharge the discharge delivers material under pressure to the pump means inlet) and the progressing cavity pump (Fig 1, #47).

Douglas et al fail to teach roll feeder means (in a hopper) having first and second side-by side, counter-rotating rollers.

Anderson teaches a hopper having counter-rotating rollers (Fig 1, #12 and #12') in a hopper for the purpose of discharging material under pressure (col 4, lines 57-60) and in precise volumetric quantities (col 4, lines 17-18).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Douglas et al with counter-rotating rollers in the hopper as taught by Anderson because it provides greater control of the process by delivering material under constant pressure and in precise volumetric quantities thereby increasing the apparatus's efficiency.

[1] The Examiner notes that the claim limitation "dough-like" does not further limit the apparatus because claiming a material shaped does not structurally define an apparatus.

8. Claims 1-4 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose et al (5,750,169) in view of Anderson (4,494,920).

Rose et al teach an extruder assembly (Fig 1) for material[1] having a progressing cavity pump means (col 5, lines 21-25) having an inlet and an outlet, the outlet being

adapted to form the material into a desired configuration; the inlet of the pump has screw feeder means (Fig 1, #10 and #34); the progressing cavity pump means has screw feeder means (Fig 1, #10 and #34); the pump means outlet has extruder means (col 5, lines 26-42), the extruder means including means for incorporating minor constituents into the material (Fig 1, #16 col 5, lines 63-65); and the screw feeder (Fig 1, #10 and #34) means interconnects the hopper (Fig 1, #28, note that the hopper has a discharge the discharge delivers material under pressure to the pump means inlet) and the progressing cavity pump (col 5, lines 21-25).

Rose et al fail to teach roll feeder means (in a hopper) having first and second side-by side, counter-rotating rollers.

Anderson teaches a hopper having counter-rotating rollers (Fig 1, #12 and #12') in a hopper for the purpose of discharging material under pressure (col 4, lines 57-60) and in precise volumetric quantities (col 4, lines 17-18).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Rose et al with counter-rotating rollers in the hopper as taught by Anderson because it provides greater control of the process by delivering material under constant pressure and in precise volumetric quantities thereby increasing the apparatus's efficiency.

[1] The Examiner notes that the claim limitation "dough-like" does not further limit the apparatus because claiming a material shaped does not structurally define an apparatus.

Response to Arguments

9. Applicant's arguments filed 1/3/05 have been fully considered but they are not persuasive.

The 102 rejections have been obviated by the amendment to claim 9.

The Applicant argues that the Rose reference is improper because the metering pumps do not receive material from a hopper but instead receive material after being pumped by a stuffing pump and through a dough developer. The Applicant further argues that various operations are undergone prior to entering the metering pumps.

The Examiner disagrees. Such operations taught by Rose which may differentiate the invention of Rose from the Applicant's invention fail to differentiate Rose from the invention as claimed. Rose, in combination with Anderson, teach each feature of the claimed invention.

The Applicant argues that none Gibbons, Rose or Douglas have a use for the roll feeder of Anderson in combination with their pumps.

The Examiner disagrees. Each of Gibbons, Rose and Douglas teach a hopper without a roll feed means. As discussed above, Anderson provides motivation for modifying a hopper with roll feed means because in enables control of volumetric quantities.

The Applicant argues that if the Gibbons or Douglas devices were used with dough they would not work.

While this may be true, the recitation of dough does not further limit the claims. The combination of the references teaches all of the structural elements of the claims

and such the claims are taught. If there are structural features of the Applicant's invention which enable it to process dough, and such features are not part of the prior references, such features should be recited in the claims. The mere recitation of dough in the claims does not give weight to non-claimed structural features.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

J.S.D.
January 13, 2005